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10/027,778	12/20/2001	Paul J. Klock	W0543/7052 KDW	9598

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EXAMINER

SMALLEY, JAMES N

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 02/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/027,778

Applicant(s)

KLOCK ET AL.

Examiner

James N Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-8,10-12 and 14-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10-12 and 14-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 10-12 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Molo '978.

Molo '978 discloses a container lid having a body portion (14), a stopper (38) fixed to a flap portion (34), and a handle/mounting bar (42) disposed in a body portion. Examiner asserts the mounting bar (42) is an equivalent structure to the handle structure of the instant invention. It is reasonable that one could pull upwards on the mounting bar to remove the lid from the container body.

The lid further has a sealing ring (22), which, in combination with the stopper, affects an airtight seal. Molo '978 discloses, in col. 4, line 63 through col. 5, line 4, that the vent assembly provides a complete sealing of the container. Further, examiner notes the sealing ring (16) is integral with the outer periphery of the lower surface. More specifically, the outer periphery of the lower surface curves upward and becomes the inner portion of the groove (22), best seen in fig. 3. It is this integral connection that the examiner reads the sealing ring as being, "mounted on a substantial portion of the outer periphery of the lower surface."

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 17-21 and 23-25, 27-29 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogino US 2002/0066732.

Ogino '732 discloses all limitations of the claimed invention, except for the outer edge of the cover extending to the inner surface of the sidewall.

Examiner notes the outer edge of the sidewall of Ogino '732 extends slightly beyond the outer edge of the sidewall of the container. However, Ogino '732 does not give any criticality to this extension. Further, Examiner is unable to locate criticality in the Specification for the abutment of the cover of the instant invention with the inner surface of the container. Both inventions comprise a single-point tangential contact location between a lid/cover and a rounded container periphery.

One possible benefit in reducing the radial length of the lid of Ogino '732 would be reduction in material usage, and further, to prevent a lip sticking out beyond the edge of the container, which could be accidentally engaged and pry the lid off the container, breaking the seal and contaminating the contents contained therein.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to reduce the radius of the lid of Ogino '732, bringing it within the peripheral bounds of the container rim, motivated by the benefits of reduction in material usage, and further, to prevent a lip sticking out beyond the edge of the container, which could be accidentally engaged and pry the lid off the container, breaking the seal and contaminating the contents contained therein. Examiner notes this modification is well within ordinary skill.

5. Claims 1, 3-6, 8, 10-12 and 14-21, 23-25, and 27-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogino '732 in view of Molo '978.

Ogino '732 does not disclose a stopper including a flap having a portion of the flap removably secured to the body portion of the cover and a remaining portion of the flap removably filling the opening.

Molo '978 discloses a Seal with Vent, including a flap (36) having a handle portion (42) removably secured to the body portion of the cover and a remaining portion of the flap (38) removably filling the

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opening, disclosing in col. 4, lines 63-66 that the seal provides a unique means for venting or providing a steam and pressure release for food containers.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the vent means of Ogino '732 with the vent means of Molo '978, comprising the vent cover (34), stem (28) and pedestals (54), so as to obtain the benefit of a seal that provides a unique means for venting or providing a steam and pressure release for food containers. One having ordinary skill in the art would be motivated to make such a modification because both inventions disclose hand operated pressure/vacuum-breaking mechanisms disposed in recesses on the top surfaces of container lids, and would be recognized as equivalent structures by one having ordinary skill in the art.

Examiner notes this rejection is maintained from the previous action, but the Examiner further places all remaining claims not previously included (excluding claims directed toward the bonding or adhesive fixing of the seal to the flange) because the combination of Ogino '732 in view of Molo '978 contains all claim limitations of the instant invention.

6. Claims 7, 22 and 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ogino '732 as applied above under 35 U.S.C. 103(a) in view of Molo '978 to claims 3, 18, and 25 and in further view of Poslinski et al. '152.

Poslinski et al. '152 disclose a sealing ring being held in place through bonding (see col. 2, lines 66-67 where Poslinski et al. cite bonding as a method of fixing the sealing ring to the container lid) directly to the lower surface periphery. It is well known that using adhesives is a means to bond two items together.

Regarding claims 7 and 22, it would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the sealing ring directly to the lower surface periphery, as taught by Poslinski et al. '152, so as to obtain the benefit of a hermetic seal, since it is well known to provide container lids with a sealing ring.

(Examiner notes that because the applicant has not provided a diagram of the embodiment comprising a sealing ring adhesively attached to the outer periphery of the lower surface of the cover, the

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disclosure of Poslinski et al. '152 meets the claimed limitation, to the best degree the examiner understands the invention.)

Regarding claim 26, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the sealing ring of Ogino '732, to bond it to the container lid so as to provide a stronger seal between the sealing ring to the container lid and to prevent the seal from inadvertent removal.

**Response to Arguments**

7. Applicant's arguments, see Amendment B, filed 03 November 2003, with respect to the rejection of claims 1, 3-8, 13 and 31, have been fully considered and are persuasive. The rejection of these claims has been withdrawn.

112 2nd para  
^

8. Applicant's arguments filed 03 November 2003 have been fully considered but they are not persuasive.

As noted above, Examiner asserts Molo '978 does indeed disclose a structure – mounting bar (42) – which is equivalent, although smaller, to the handle structure of the Applicant's invention. Accordingly, one could pull upwards on the mounting bar to remove the cover from the container, after the container has been properly vented.

Examiner further asserts the cover of Ogino '732 could be easily modified, reducing the peripheral boundary so as to extend the cover only to the inner surface. As cited above, Examiner notes there is no criticality in Ogino '732 for extending the periphery of the cover beyond the inner surface of the container, and further, no criticality in the Specification of the instant application for having the cover extend to only the inner surface and not beyond. The Examiner contends that both structures are nearly identical, in that they comprise a single-point, tangential contact location, which are disposed in nearly identical locations along the curved top lip of the container. Motivation for reducing the diameter of the cover of Ogino '732, so as to contact the inner surface of the container, and not extend beyond, are well within ordinary skill.

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9. Applicant's arguments, see Amendment B, filed 03 November 2003, with respect to the drawing objection have been fully considered and are persuasive. The objection of the drawings has been withdrawn.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 306-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 308-5648, email [CustomerService3700@uspto.gov](mailto:CustomerService3700@uspto.gov).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 8-5:30, Alternate Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	<a href="http://www.uspto.gov/">http://www.uspto.gov/</a>

jns  
January 15, 2004

  
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